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*NOT ADMITTED TO THE NEW YORK BAR

MEMO ENDORSED

November 14, 2012

By E-Mail

Hon. Richard J. Sullivan
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

*Q-Med AB v. HA North American Sales AB, Medicis Aesthetics Holdings Inc., and
Medicis Pharmaceutical Corp., No. 12-8071*

Dear Judge Sullivan:

We represent Defendants HA North American Sales AB, Medicis Aesthetics Holdings Inc., and Medicis Pharmaceutical Corp. (together, "Medicis") in the above-captioned matter. We write to request permission to file under seal additional pages from an excerpted document currently filed under seal as Exhibit E to the Declaration of Per Langö, as well as to file under seal a second document that Plaintiff has requested we file under seal, and that is confidential pursuant to the contracts between the parties.

As the Court is aware, plaintiff, Q-Med AB ("Q-Med") publicly filed, as Exhibit E to its moving papers, excerpts from Medicis's 2013 "Brand Plan" for the Restylane family of products. (See Decl. of Per Langö, Ex. E, Nov. 2, 2012.) That exhibit has now been sealed. In connection with our opposition to Q-Med's motion, we intend to file as an exhibit to one of our declarations in opposition to Plaintiff's Motion

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for a Preliminary Injunction additional pages of the Brand Plan. The document contains, among other things, non-public sales figures and confidential marketing strategy for Restylane. Defendants would suffer competitive harm if such information were to be accessed by its competitors from the public record.

The Brand Plan is being submitted in connection with a motion for a preliminary injunction. As far as we are aware, the Second Circuit has not articulated whether such a document is a "judicial document" of which the public may claim an interest under the Second Circuit's requirements in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006). But assuming it is, "the privacy interests of" Defendant as to this type of commercially sensitive information nevertheless outweigh any legitimate public interest and it is thus properly sealed. *Id.* The sensitive nature of this document is evident from the fact that, prior to the Court's sealing of Exhibit E, an analyst immediately contacted the company to discuss the document, which he had assumed to be confidential (and he was told that it was). Medicis requests permission to file the remainder of the document under seal to prevent additional injury to its privacy interest in this material. *Standard Inv. Chartered Inc., v. Financial Industry Regulatory Auth., Inc.*, 347 Fed. Appx. 615, 617 (affirming order sealing financial data because "an outsider. . . could, upon viewing the facts and figures. . . use that information to deduce [movant's]. . . tactics" and thus "[d]isclosure could cause. . . significant competitive disadvantage"). We believe the sealing of this exhibit is "narrowly tailored" to serve that interest. *Lugosch*, 435 F.3d at 120.

The second document that we seek permission to file under seal is an excerpt from an April 2012 competitive analysis of Restylane in various countries in the world where Plaintiff markets and sells the product. Pursuant to contracts between the parties, Defendants have notified Plaintiff of their intent to use this apparently non-public material, and Plaintiff has asked that it be filed under seal. Plaintiff believes that the document should be filed under seal because it reflects the results of a confidential brand assessment study for hyaluronic acid products outside the United States and contains sensitive information of competitive value

We thus respectfully ask that the Court grant Defendants leave to file under seal these two documents, which will be appended to a declaration that we will file this evening in support of Medicis's opposition to Q-Med's motion for a preliminary injunction. We are, of course, available to discuss the foregoing at the Court's request.

Respectfully submitted,

Jay Cohen

cc: Jyotin Hamid, Esq.
Jeremy N. Klatell, Esq.

SO ORDERED
Dated:

RICHARD J. SULLIVAN
U.S.D.J.

11/14/12